IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMIANL WRIT PETITION NO. 2437 OF 2004

1. Smt. Smita V. Chatur ...Petitioner.

V/s

Mrs. Supriya P. Patil
and Anr. ...Respondents.

Mr. M.K. Kulkarni for the petitioner.
Mr. Anil Subramanium fo respondent No.1.
Mr. S.R. Shtile, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 21st March, 2005

P.C.:

1. Petitioner is challenging the Order of issuance of process passed by the Trial Court in a complaint filed under section 138 of the Negotiable Instruments Act by the respondent No.1.

2. It is submitted by the learned Counsel for the petitioner that the Trial Court had not applied its mind before the issuance of process. He submitted that no notice was received by the petitioner and, therefore, no cognizance of the complaint could have been taken by the Trial Court. He submitted that the notice which was sent by the complainant was allegedly not claimed. It is, therefore, submitted that the remark "Not claimed" did not amount to service of demand of notice on the petitioner. It is submitted

that since the notice demanding payment was not served on the petitioner, no cause of action had arisen to file the complaint. Therefore, the process is liable to be recalled. It is further submitted that there was no legally enforceable debt as the petitioner had already repaid the entire amount. It is submitted that the complainant was not possessing any money lending licence and, therefore, the debt was not a legally enforceable debt. It is further submitted that the complainant had suppressed the important material documents in the Trial Court which would show that the petitioner was saddled with usuary interest. It is, therefore submitted that the said process which was issued by the Trial Court was liable to be recalled.

3. It is not possible to accept the submissions made by the learned counsel for the petitioner. All the questions raised in this petition can be decided only after the evidence is adduced in the Trial Court and, thereafter, the Magistrate would be in a position to decide all the questions which are raised in this petition. Thus, there is no reason to interfere with the said order of issuance of process. All questions which are raised in this petition are kept open and the Trial Court shall decide these questions after the

evidence is adduced by both sides. This is not a fit case for interfering with the order of issuance of process.

4. Writ Petition is accordingly dismissed.

V.M. KANADE, J.